

FILED 07 SEP 04 14:18 USDC ORW

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

VERNON BANTA,

Civil No. 06-3003-CL

Plaintiff,

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

v.

CITY OF MERRILL, Oregon, a municipality of the  
State of Oregon; JULIE SMITH, individually and as  
the Police Commissioner of the City of Merrill,  
Oregon

Defendants.

CLARKE, Magistrate Judge:

Plaintiff Vernon Banta brought this action against defendants City of Merrill and Julie Smith, alleging claims for violation of the Age Discrimination in Employment Act of 1967 (ADEA); violation of state age discrimination statutes; failure to pay overtime pursuant to the Fair Labor Standards Act (FLSA); failure to pay overtime pursuant to state statutes; and wrongful termination. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337, 29 U.S.C. §§ 216(b) and 626(c)(1). The parties have executed written consents for entry of final judgment by a magistrate judge (#10, #26). 28 U.S.C. § 636(c); Fed. R. Civ. P. 73. During the

course of the jury trial, which commenced on August 22, 2007, the claims against Julie Smith Hargraves were dismissed. Plaintiff's federal claim under the ADEA; his claim for failure to pay overtime pursuant to the FLSA; his claim for failure to pay overtime pursuant to state statutes; and his claim for wrongful termination were tried to the jury, and plaintiff's claim for violation of state age discrimination statutes was simultaneously tried to the Court. See ORS 659A.885(1)(2). The jury returned a verdict in favor of plaintiff on his claims for failure to pay overtime under the FLSA, and wrongful discharge, and in favor of defendant City of Merrill on plaintiff's ADEA claim and his claim for unpaid wages under Oregon state statutes (#69). This Findings of Fact and Conclusions of Law addresses plaintiff's state statutory claim for age discrimination in violation of ORS 659A.030.

Plaintiff alleges claims for unlawful employment practices based upon age in violation of ORS 659A.030(1)(a), (1)(f), and (1)(g). To the extent these claims were against Smith Hargraves, the claims have been dismissed. The standard for establishing a prima facie case of age discrimination in Oregon is the same as the standard under federal law, Pascoe v. Mentor Graphics Corp., 199 F. Supp.2d 1034, 1052 (D. Or. 2001), and the facts necessarily will be the same.<sup>1</sup> The Ninth Circuit has determined, based on other circuit court holdings, that, "where an employee brings an equitable discrimination claim . . . and a legal discrimination claim . . . against an employer based on the same facts, the Seventh Amendment requires the trial judge to follow the jury's implicit or explicit factual determinations in deciding the legal claim." Miller v. Fairchild Indus., Inc., 885 F.2d 498, 507 (9<sup>th</sup> Cir. 1989). The Seventh Amendment provides that,

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<sup>1</sup> Oregon law differs in that it extends protection to persons over the age of 18, ORS 659A.030(1)(a)(b), but that difference is not at issue in this case.

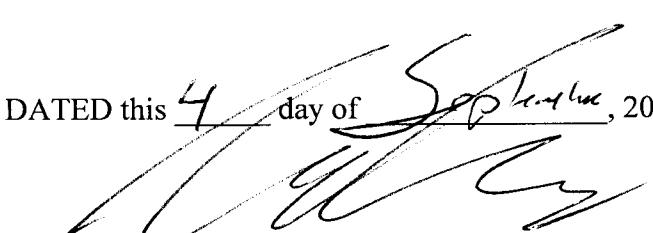
"no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law." The Ninth Circuit has held that, "it would be a violation of the seventh amendment right to jury trial for the court to disregard a jury's finding of fact." Floyd v. Laws, 929 F.2d 1390, 1397 (9<sup>th</sup> Cir. 1991).

Here, giving effect to the facts implicitly determined by the jury, which are preclusive, the Court finds that defendant City of Merrill did not violate ORS 659A.030.

### **CONCLUSION**

The Court finds in favor of defendant City of Merrill and against plaintiff Vernon Banta on plaintiff's claim of age discrimination in violation of ORS 659A.030.

IT IS SO ORDERED.

DATED this 4 day of September, 2007  
  
Mark D. Clarke  
United States Magistrate Judge